

NO. 78946-1

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SUPREME COURT OF THE STATE OF WASHINGTON

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HANS YORK and KATHERINE YORK, parents of AARON E. YORK  
and ABRAHAM P. YORK, and SHARON A SCHNEIDER and PAUL A.  
SCHNEIDER, parents of TRISTAN S. SCHNEIDER,

Appellants,

v.

WAHKIAKUM SCHOOL DISTRICT 200,

Respondent.

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RESPONDENT'S BRIEF IN ANSWER TO BRIEF OF AMICI CURIAE  
WASHINGTON EDUCATION ASSOCIATION AND DRUG POLICY  
ALLIANCE

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## ARGUMENT

### I. THE CONCERNS RAISED BY THE AMICI CURIAE ARE NOT SUPPORTED BY THE RECORD IN THIS CASE.

The Amici Curiae make numerous allegations regarding random drug testing of student athletes, none of which are supported by the record in this case. First, Amici assert that random drug testing is not useful in deterring drug use. The record in this case is replete with credible evidence that random drug testing is helpful in discouraging drug use among students. Randy Aultman, principal of Vernonia High School in Vernonia, Oregon, had first hand experience with random drug testing of student athletes. Based upon his experience, Principal Aultman concluded that “the deterrent effect of the drug policy on student athlete drug usage was profound” (CP 178). Dr. Richard Jones, Superintendent, Burlington-Edison School District in Burlington, Washington, based upon five years of experience with a random student drug testing program, concluded that “the deterrent effect of the drug policy on student drug use has been positive” (CP 182). It should be noted that the Wahkiakum School District Drug Testing Policy at issue in the instant case was patterned after the Burlington-Edison policy (CP 113). Dr. Linn Goldberg, M.D., a recognized expert on student athlete drug testing and principal investigator of the National Institute on Drug Abuse National Institutes of Health sponsored study on the efficacy of random student athlete drug testing, concluded, based upon one year of data, that “drug and alcohol testing (random notification) for adolescent athletes increases the percentage of

non-users and lowers the heavy use of student athletes” and “overall, mandatory, random drug testing of athletes reduces the use of illegal drugs by athletes” (CP 125).<sup>1</sup>

Second, the Amici Curiae assert that programs of random student athlete drug testing constitute a barrier to participation in extracurricular athletic programs (*Brief of Amici Curiae*, at 8). Again, the record in the instant case does support this allegation. According to W. Robert Garrett, Superintendent of the Wahkiakum School District, no athletes refused to participate in extracurricular sports because of the adoption of the District’s random drug testing policy (CP 83). Based upon his research regarding random drug testing of student athletes, Dr. Goldberg, concluded that “drug testing did not reduce student athlete participation” (CP 125). Even Abraham York and Tristan Schneider, whose parents brought the lawsuit to invalidate the Wahkiakum School District’s policy, continued to participate in extracurricular athletic events after the Policy was adopted (CP 169. 174).

Third, contrary to the picture painted by the Amici Curiae, Policy 3515 does not require students to disclose medications that they are using (CP 77, 83). Fourth, the Amici Curiae label the drug testing process to be

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<sup>1</sup> Dr. Goldberg has published the findings of his pilot study. Goldberg, L., Elliot, D.L., MacKinnon, D.P. Moe, E., Kuehl, K.S., Nohre, L., & Lockwood, C.M. (2003). Drug testing athletes to prevent substance abuse. Background and pilot study results of the SATURN (Student Athlete Testing Using Random Notification) study. *Journal of Adolescent Health*, 32, 16-25. The Office of National Drug Control Policy has also concluded that drug testing in schools is effective in reducing drug use and in deterring drug use among adolescents. Department of Justice. (1996). Creating safe and drug free schools: An action guide. Washington DC.: Office of Juvenile Justice and Delinquency Prevention, at 43-45.

embarrassing and humiliating (*Brief of Amici Curiae*, at 11). Yet, under the Wahkiakum School District Policy at issue in the instant case there is no direct observation of the actual act of urination (CP 100). Abraham York, the son of one of the Appellants, when asked, stated that the sample collection process did not embarrass him (CP 169).

Finally, there is nothing in the record before this Court to suggest that Wahkiakum Policy 3515 undermines the student-teacher relationship as asserted by the Amici Curiae (*Brief of Amici Curiae*, at 14). The Wahkiakum Policy is widely supported by the School Board, administrators, coaches, and parents (CP 109-113, 117).

## **II. JUDGMENTS AS TO THE EFFICACY OF RANDOM DRUG TESTING OF STUDENT ATHLETES ARE PROPERLY LEFT TO THE SOUND DISCRETION OF THE LOCAL SCHOOL BOARD**

The Amici Curiae seem to suggest that if there is a diversity of expert opinion<sup>2</sup> concerning the efficacy of random student drug testing, then a local school board must be prohibited from adopting such a drug testing program. That position unlawfully usurps the powers of the duly elected local school board. The wisdom of adopting a random student

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<sup>2</sup> As is the case with most controversial policy issues, it is typically possible to find expert opinion on both sides of the issue. It is important to note that the authors of the first University of Michigan study cited by Amici Curiae (*Brief of Amici Curiae*, at 5) concluded: "one cannot make definitive causal interpretations regarding effects of drug testing." Ryoko Yamaguchi, et al., Relationship Between Student Illicit Drug Use and School Drug-Testing Policies, 73 J. SCH. HEALTH, at 164 (2003). The second University of Michigan study also used cross-sectional data which cannot yield valid conclusions as to cause-effect relationships. Also, its analysis of random drug testing focused on a few schools that employed random drug testing of all students, not random drug testing of student athletes. Ryoko Yamaguchi, et al., Drug Testing in Schools: Policies, Practices, and Association With Student Drug Use, YOUTH, EDUC. & SOC'Y (YES) OCCASIONAL PAPERS SERIES (The Robert Wood Johnson Foundation, Ann Arbor, MI) 2003, at 8, 15-16.

athlete drug testing program in the Wahkiakum School District is not for the Washington Education Association or for the Drug Policy Alliance to decide; that decision rests with the local school board. For every argument advanced against random student drug testing, there are arguments in favor of such testing. For instance, the suspicion based testing supported by Appellants is open to improper profiling of students based upon gender and ethnicity and can be arbitrarily administered. Furthermore, even if random drug testing did not deter drug use, it still may be a useful tool to identify students using drugs at an early stage in order to allow intervention when it can be most effective. Balancing all of these competing interests is precisely the role of the elected local school board.

**III. THE ARGUMENTS OF THE AMICI CURIAE WITH REGARD TO THE CONSTITUTIONALITY OF RESPONDENT'S DRUG TESTING POLICY ARE NOT SUPPORTED BY CITATIONS TO LEGAL AUTHORITY.**

Amici Curiae Washington Education Association and Drug Policy Alliance assert that the Wahkiakum School District's drug testing policy violates the Washington State Constitution (*Brief of Amici Curiae, at 1*). However, they have not presented any legal authority whatsoever in support of their position. On the other hand, the State of Washington in its Amicus Brief has presented a detailed analysis of Article 1, Section 7, of the Washington Constitution, in support of the Respondent's position. See Amended Amicus Brief of the State of Washington.



## CONCLUSION

Respondent respectfully asks this Court to find that Wahkiakum School District Policy No. 3515 does not violate Article 1, Section 7, of the Washington State Constitution, and to affirm the trial court's Order granting Respondent's Motion for Summary Judgment.

**DATED** this 24<sup>th</sup> day of April, 2007.

Respectfully submitted,  
**FILED AS ATTACHMENT  
TO E-MAIL**

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